

General Information Letter: Petition for alternative apportionment cannot be granted absent a showing that the statutory apportionment method does not fairly represent the extent of the taxpayer's business activities in Illinois.

June 18, 2001

Dear:

This is in response to your letter postmarked May 2, 2001, in which you request permission to xxxx  
xx rather than the statutorily-mandated apportionment formula,  
pursuant to Section 304(f) of the Illinois Income Tax Act (the "IITA"; 35 ILCS 101 *et seq.*). The  
nature of your letter and the information you have provided require that we respond with a General  
Information Letter, which is designed to provide general information, is not a statement of  
Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c),  
which may be found on the Department's web site at [www.revenue.state.il.us](http://www.revenue.state.il.us). For the reasons  
discussed below, your petition cannot be granted at this time.

In your letter you have stated the following:

We are requesting permission for xx ("xxxx") to  
utilize separate accounting on its Illinois Partnership Replacement Tax Return, Form  
1065 for the 2000 tax year. The return is due on October 15, 2001. This request is  
being made pursuant with the requirements of 86 Ill. Adm. Code Section 100.3390.

xxxx is a limited partner in various multi-tiered investment partnerships that do business  
in Illinois and other states. The business in Illinois is investment related. xxxx does not  
have any employees or independent contractors in Illinois. xxxx does not do any  
business in Illinois other than owning interests in limited partnerships that do business  
in the state. xxxx has been unable to obtain the apportionment information for these  
partnerships. Consequently, xxxx does not have the necessary information required to  
properly calculate its Illinois apportionment formula. xxxx does not have any of its own  
Illinois apportionment factors.

xxxx receives a schedule from each partnership listing the partnership's income per  
state, including Illinois. Based on this information, xxxx is requesting permission to use  
separate accounting such that it will allocate its share of the partnerships' Illinois  
income as provided in the partnerships' schedule of income by state. We believe that  
the use of separate accounting will allow xxxx to properly reflect its income in the state  
of Illinois, while the use of apportionment without the information to properly calculate  
xxxxxx apportionment factor would likely result in a misrepresentation of xxxxxx Illinois  
income.

## **Response**

Section 305(a) of the IITA provides:

The respective shares of partners other than residents in so much of the business  
income of the partnership as is allocated or apportioned to this State in the possession

of the partnership shall be taken into account by such partners pro rata in accordance with their respective distributive shares of such partnership income for the partnership's taxable year and allocated to this State.

A partnership (including a limited liability company that has elected partnership treatment) is, by definition, a nonresident, and so would apply this section to income it receives from a partnership. See Section 1501(a)(14), (16) and (20) of the IITA. From your letter, it appears that xxxxxxxxxxxxxxxx xxxxxxxxxxxxxxxxxxxxxxxxxxxx is requesting to determine its Illinois net income in accordance with this section. If that is the case, no petition under Section 304(f) of the IITA is necessary.

If xx is requesting some other method of apportioning its income from partnerships, we will need additional information from you. Section 304(f) of the IITA provides:

If the allocation and apportionment provisions of subsections (a) through (e) and of subsection (h) do not fairly represent the extent of a person's business activity in this State, the person may petition for, or the Director may require, in respect of all or any part of the person's business activity, if reasonable:

- (1) Separate accounting;
- (2) The exclusion of any one or more factors;
- (3) The inclusion of one or more additional factors which will fairly represent the person's business activities in this State; or
- (4) The employment of any other method to effectuate an equitable allocation and apportionment of the person's business income.

Taxpayers who wish to use an alternative method of apportionment under this provision are required to file a petition complying with the requirements of 86 Ill. Adm. Code Section 100.3390, which may be found on the Department's web site at [www.revenue.state.il.us](http://www.revenue.state.il.us).

Your request does not indicate in what manner the apportionment formula required under Section 304 of the IITA fail to fairly represent the extent of the business activities of xxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxxxxxx in Illinois, or how the separate accounting you request does fairly represent the extent of its business activities in Illinois.

Please note that 86 Ill. Adm. Code Section 100.3390(e)(1) requires a petition to be filed at least 120 days prior to the due date (including extensions) for the first return for which permission is sought to use the alternative apportionment method. A petition filed May 2, 2001 will allow a taxpayer to use the requested method on original returns due on or after August 30, 2001, if granted.

As stated above, this is a general information letter which does not constitute a statement of policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department. If you still believe that your petition should be granted, please supplement the petition in accordance with the

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provisions of 86 Ill. Adm. Code Section 100.3390. If you have any questions, you may contact me at (217) 782-7055.

Sincerely,

Paul S. Caselton

Deputy General Counsel -- Income Tax